IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 220 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL SALAM YUSUF SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 220 of 1999

MR BS SUPEHIA for Petitioner No. 1

MR KC SHAH, APP for Respondent No. 1 - State

CORAM : MR.JUSTICE D.P.BUCH
and
MR.JUSTICE H.H.MEHTA

Date of decision: 08/05/2003

C.A.V. JUDGEMENT

(Per : MR.JUSTICE H.H.MEHTA)

1. The original accused - Abdul Salam Yusufbhai Shaikh of N.D.P.S. Case No.8/96 tried and decided by the learned Additional Sessions Judge, Valsad at Navsari (who will be referred to as 'the learned Judge of the trial court') has, by preferring this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short 'Cr.p.c.') read with Section 36-B of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short the 'NDPS Act') challenged the correctness, legality, validity and propriety of judgment Exh.42 rendered on 30th December, 1998, in aforesaid NDPS Case No.8/96 by the learned Judge of the trial Court by which said accused came to be convicted under Section 235(2) of Cr.p.c. for offence punishable under Section 22 of the NDPS Act and he sentenced to undergo R.I. for 12 years and to pay a fine of Rupees One lakh, and in default of fine to undergo further imprisonment for one year.

2. The facts leading to this present appeal in a nutshell can be summarised as follows:

2.1 On 15.2.96, P.W.4 Mr.Prakash Mahendrabhai Jadav was serving as Police Inspector in State Narcotics Cell, CID Crime, Gujarat State, Ahmedabad. Mr.Jadav, in company of Deputy Superintendent of Police Mr.Modi, Police Inspector Shri N.M.Pathan and other Police personnel had come to Navsari to carry out the raid on the basis of information with regard to narcotic drugs. During their visit at Navsari, at about 19.00 hrs., Mr.Jadav received an information from one informant to the effect that one person named Abdul Salam Yusufbhai Shaikh, resident of Jumma Masjid, Navsari, was selling charas being narcotic substance, on the otta of Jumma Masjid at Navsari and that he had put on one sky coloured full sleeves open shirt and white pant. In the information, it was also stated that said person was of black complexion with small stature. On receipt of such information, Mr.Jadav informed the Deputy Superintendent of Police of Narcotic Cell Mr.Modi about the said information in writing. He by that writing requested to inform Police Inspector Mr.M.F.Jadav of Navsari Town Police Station.

2.2 Thereafter two independent persons who can act as panch witnesses were called in Navsari Town Police Station. Mr.Jadav apprised of the panch witnesses and other members of the staff and members of the raiding party about the information which he had received.

Before leaving Navsari Town Police Station, inter-se search was taken and given to panch witnesses and members of the raiding party. Before leaving Navsari Town Police Station, Mr.Jadav drew a preliminary panchnama during the period between 19.35 hrs and 19.55 hrs. Thereafter, they left Navsari Police Station for Jumma Masjid. When they reached Jumma Masjid, they found that one person of small stature and whose complexion was black, was found sitting on the otta (steps) of Jumma Masjid. He had put on light sky coloured full sleeves open shirt and white pant. By rushing towards that person immediately that person was caught hold off by members of raiding party and they made a cordon surrounding that person. Mr.Jadav asked the name of that person, and on being asked that person said that he was Abdul Salam Yusufbhai Shaikh, resident of Jumma Masjid, Navsari (he is appellant before this Court).

2.3 Thereafter, Mr.Jadav apprised of appellant about the information which he had received. Mr.Jadav made the appellant to understand that he wanted to search his person and therefore if he wanted to call a Magistrate he could call such Magistrate or that if he wanted to go to some Magistrate or if he wanted to get himself searched by some Gazetted Officer he could do so. The appellant declined to call anyone. For giving this type of information to appellant a separate writing was given to the appellant. The appellant allowed Mr.Jadav to take search of his 'person'. On making search of 'person' of the appellant in presence of panch witnesses, some article was found concealed in the waist portion of his pantaloon. On making further search of that waist portion of his pantaloon just below the open shirt, one polyethylene bag containing some substance was found. On opening that polyethlyene bag it was found that it was containing some black coloured substance. That substance was smelt by Mr.Jadav, panch witnesses and other members of the raiding party, and it was found that it was charas. For keeping such contraband article/charas, pass and permit were asked for from the appellant. He informed that he had no such pass or permit. Thereafter, Mr.Jadav got that substance weighed through Police Jamadar Ishvarlal Ganeshlal on weighing scale. It was found that it was weighing 430 grams and its estimated value was about Rs.8,600/-. From that 430 gms. of charas, 50 gms of charas was taken in one another polyethylene bag for the purpose of sample. That polyethylene bag containing 50 gms of charas which was taken as a sample was tied with string and that polyethylene bag was put in one tin box of Babool Jafarani Jarda Tobacco. Thereafter a paper slip

containing the signatures of panch witnesses and Mr.Jadav was placed over that polyethylene bag of sample and then that tin box was closed with its lid. Thereafter, that tin box was properly packed and duly sealed and a seal of Police Inspector, Narcotic Cell, CID Crime, Ahmedabad, was put on that wax seal. Thereafter remaining substance i.e. 380 gms of charas was kept in that very polyethylene bag from which it was found. That polyethylene bag was also tied with string and it was placed in a tin box meant for Jarda Tobacco of Tulsi Jaffrani. That another tin box was also properly packed and duly sealed in presence of panch witnesses. During the search, currency of Rs.550/- was also found from the right pocket of pantaloon which that person had put on. Thereafter, that person was formally arrested. He was informed about the grounds of his arrest. The grounds of arrest were also stated to the wife of appellant, in writing. Thereafter, Mr.Jadav completed panchnama for the entire procedure of search, recovery and seizure of contraband article and muddamal sample article and currency of Rs.550/-. That panchanam was drawn just below earlier preliminary panchnama which was drawn in the Navsari Police Station, before leaving for Jumma Masjid. That panchnama came to be completed at 20.45 hrs. That panchnama was signed by two panch witnesses and Mr.Jadav.

2.4 Thereafter, Mr.Jadav lodged his complaint against appellant in Navsari Town Police Station at 21.30 hrs. on 15.2.96. That complaint came to be registered as C.R.No.III 187/96. The case which was registered on the basis of that complaint was investigated by P.W. 6 Police Inspector Mr.Maganbhai Fakrubhai Jadav. The muddamal sample article was sent to Forensic Science Laboratory, Ahmedabad, (for short 'FSL') along with covering letter dated 15.2.96 through proper channel of Deputy Supd. of Police, Navsari. That muddamal sample article was received by Officer of FSL on 19.2.96. That muddamal sample article was analysed on or about 10.5.96. The Assistant Director of FSL sent report of analyses to PSI, Navsari Town Police Station. As per that report, the substance which was sent for analyses was found to be a charas within the meaning given under the provisions of NDPS Act. On receipt of such report, the Investigating Officer filed the chargesheet against appellant in the Court of Special Judge, Valsad at Navsari on 17.5.96. That chargesheet came to be registered as Special NDPS Case No.8/96.

2.5 The learned Judge of the trial court who also presided over the Special Court constituted under

Section 36 of the NDPS Act, on the basis of material on record, framed charge against accused on 11.4.97 for offence punishable under Section 22 of the NDPS Act. On recording plea of the appellant he pleaded not guilty to the charge and claimed to be tried.

2.6 In order to prove the case against accused for which charge was framed, the prosecution examined following witnesses:

(1) P.W.1 Shri Jahagir Dinshaji Dhalu Ex.6 (a panch witness)

(2) P.W.2 Shri Gulam Sabbir Rahimmiya Exh.8 (a panch witness).

(3) P.W.3 Police Jamadar Shri Ishvarlal Ganeshlal Exh.12 (one of the members of the raiding party who weighed the contraband article found from the appellant).

(4) P.W.4 Police Inspector Mr.Prakash M.Jadav Ex.13 (Raiding and Seizing Officer and the Complainant).

(5) P.W.5 Smt.Rajnikanta Narendra Shah Exh.26 (Scientific Officer of FSL)

(6) P.W.6 Police Inspector M.F.Jadav Exh.28 (Investigating Officer who filed the chargesheet).

(7) P.W.7 Prahladrai Labhshankar Joshi Exh.31 (Assistant Director of FSL).

2.7 In support of the case against the accused for which the charge was framed, the prosecution also produced and proved certain documents. The prosecution has placed heavy reliance on the following documents out of the documents which are produced by the prosecution;

2.8 (1) Panchnama Exh.7.

(2) A written information given to appellant so as to make a compliance of Sec.50 of the NDPS Act Exh.14.

(3) A copy of forwarding letter under which the muddamal sample article was sent to FSL Exh.15.

(4) Seizure Memo issued to appellant and which is signed by the appellant Exh.16.

(5) A written information given to appellant informing him the grounds of arrest Exh.17.

(6) Complaint Exh.18.

(7) A report along with which complainant sent the muddamal sample article and other articles seized from the appellant, panchnama, complaint alongwith custody of the appellant sent to PSO, Navsari Police Station Exh.19.

(8) Information received by Mr.P.M.Jadav who immediately reduced it into writing Exh.20.

(9) Report of FSL Exh.27.

(10) A letter of Police Inspector, Navsari Town Police Station addressed to Director FSL Exh.29.

(11) A receipt issued by Assistant Director, FSL for having received one parcel from Police Inspector, Navsari Town Police Station Exh.30.

2.9 On recording of evidence of prosecution witnesses was over, the circumstances appearing against the appellant were brought to the notice of and explained to appellant. Whatever the replies were given by appellant to questions put to him, were recorded below Exh.2 as a result of which further statement of appellant came to be recorded under Section 313 of Cr.p.c. The appellant has practically denied the entire case of the prosecution, meaning thereby, the defence of the appellant is of general denial. In reply to question No.72, the appellant has stated that he has not committed any offence and a false case has been lodged against him. The appellant has neither examined himself nor any witness in his defence. Before the arguments were advanced for and on behalf of the prosecution, the appellant filed his written arguments as per the provisions of Sec.314 of Cr.p.c. The learned Judge of the trial court after hearing the arguments of the

learned advocates for both the parties, and after making scrutiny, thorough examination, analyses and appreciation of the evidence on record, came to a conclusion that prosecution has proved the case against the appellant beyond reasonable doubt. On the basis of such conclusion, the learned Judge of the trial court by rendering his judgment Exh.42 on 30.12.98 in aforesaid NDPS Case No.8/96, convicted the accused under Section 235(2) of Cr.p.c. for offence punishable under Section 22 of the NDPS Act and thereafter, after hearing the appellant as well as the learned APP who appeared in the trial court, on the question of quantum of sentence, the learned Judge of the trial court inflicted sentence as stated in earlier part of this judgment.

2.10 Being aggrieved against and dissatisfied with the said judgment of conviction and sentence, the original accused who is appellant in this appeal has, preferred this present appeal.

3. We have heard Shri B.S.Supehia, learned advocte who is appointed in Legal Aid by this Court for the appellant and Mr.K.C.Shah, learned APP for the respondent State in detail, at length. Mr.K.C.Shah has taken us through the entire evidence on record.

4. Mr.B.S.Supehia, learned advocate who is appointed in Legal Aid by this Court has vehemently argued that in this case P.W.4 Mr.P.M.Jadav committed breach of Section 42 of the NDPS Act, and as Section 42 of the NDPS Act is mandatory in nature, the trial following entire raid is illegal and it vitiates the conviction. In this appeal, Mr.Supehia has taken no other contention except the contention with regard to breach of Section 42 of the NDPS Act. He has, therefore, submitted to this Court that, as there is a clear cut violation of Sec.42 of the NDPS Act, this appeal deserves to be allowed and the impugned judgment of conviction and sentence be set aside. Lastly he submitted that the appellant be acquitted of the offence for which the charge was framed against him.

5. Mr.K.C.Shah, learned APP for the respondent State has supported the impugned judgment which is challenged in this appeal, throughout. He has submitted that there is an ample evidence on record to show that Mr.P.M.Jadav fully observed and complied with the provisions of Section 42 of the NDPS Act and, therefore, the contention taken by Mr.Supehia is devoid of merits and same is required to be straightway rejected. Lastly, he requested this Court to dismiss the appeal by confirming

the impugned judgment.

6. We have dispassionately considered the submissions made by learned advocates for both the parties. We have thoroughly examined and scrutinised the evidence on record. For arriving at our own conclusion, we have reappreciated the evidence on record. We have also examined the impugned judgment and record and proceedings of the case which are called for from the trial court. Looking to only contention taken by Mr.Supehia, we have to examine the evidence on record so as to satisfy on the point as to whether P.W.4 Mr.P.M.Jadav had infact complied with the provisions of Section 42 of the NDPS Act. For this purpose, it would be necessary to examine the provisions of Sec.42 of the NDPS Act. Section 42 of the NDPS Act reads as follows;

"Sec.42 : Power of entry, search, seizure and arrest without warrant or authorisation:- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any narcotic drug, or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such enry;

(c) seize such drug or substance and all materials used in the manufacture thereof

and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV relating to such drug or substance; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior."

7. Looking to the text of Section 42 of the NDPS Act, an authorised officer who is invested with the powers of entry, search, seizure and arrest without warrant or authorisation by special or general order either by the Central Government or the State Government can make entry in any building, conveyance or enclosed place between sunrise and sunset and may make search, seizure and arrest if any contraband article in respect of which an offence punishable under Chapter IV is kept or concealed in such building, conveyance or enclosed place. Looking to Section 42 of the NDPS Act, a duty is cast on such authorised officer to reduce the information, if any given to him into writing and as per sub-sec.(2) of Sec.42 of the NDPS Act a further duty is cast to send copy of such information to his immediate official superior, forthwith. Looking to Section 42 of the NDPS Act following two requirements are to be fulfilled by an authorised officer who is empowered with powers of entry, search or arrest without warrant either by the Central Government or the State Government.

(1) If an officer receives an information through an informant or any other person then he is required to reduce that information in writing.

(2) He is also required to send copy of such information which he has reduced into writing to his immediate official superior forthwith.

8. Shri Supehia has argued that P.W.4 Mr.P.M.Jadav has not stated anywhere in his deposition that he reduced the information into writing. If we examine the evidence of P.W.4 Mr.Jadav, we find that he has only deposed in his evidence that he informed Mr.Modi, Deputy Supdt. of Police of Narcotic Cell about the information, in writing and he also informed about it to Mr.M.F.Jadav who was Police Inspector of Navsari Town Police Station. Shri Supehia has argued that Mr.Jadav has not reduced into writing the information immediately after he received the same from the informant. In examination-in-chief, he has deposed that he and other officers of his department had come to Navsari for raid in connection with narcotic drugs, and during that time, at about 19.00 hrs. he came to know that one person named Abdul Salam Yusufbhai Shaikh resident of Jumma Masjid, Navsari, was selling charas on the otta of Jumma Masjid and that he had put on light sky coloured full sleeves' open shirt and white pant. In the information he also came to know that person was of small stature with black complexion. Immediately, thereafter he did not state that he reduced that information into writing. In cross-examination he has deposed that information with regard to this crime was received by him in Navsari Police Station at about 7.00 p.m. i.e. 1900 hours. He has further deposed that for this he informed Police Inspector of Navsari Police Station orally but he did not informe him by sending a writing. By reading this evidence, Shri Supehia has argued that Mr.P.M.Jadav has committed breach of a mandatory requirement of reducing the information into writing immediately on receipt of such information by him. He has further argued that, when information was not reduced into writing, for Mr.Jadav question does not arise for sending copy of it to his immediate superior officer and, therefore, provisions of sub-sec.(2) of Sec.42 of the NDPS Act are also not complied with and, therefore, Sec.42 which is mandatory in nature is not complied with and therefore, the trial has become vitiated and conviction cannot be sustained and clear cut acquittal be given to the appellant.

9. As against aforesaid arguments, Mr.K.C.Shah,

learned APP has countered the contention by arguing that in this case in stead of reducing the information into writing separately on separate sheet of paper Mr.Jadav immediately prepared a letter addressed to Deputy Supdt. of Police, Narcotic Cell, CID Crime, Gujarat State, Ahmedabad, in his own hand writing by placing a carbon below the original and original was immediately given to Shri Modi, Deputy Supdt. of Police of Narcotic Cell who had come all along with him to Navsari, from Ahmedabad, and on receipt of said original, Mr.Modi put an endorsement to the following effect. A carbon copy of the said letter is produced at Exh.20.

"Received

Sd/- .....
15/2
19.15 hrs."

10. Mr.K.C.Shah has argued that instead of reducing the information into writing separately, Mr.Jadav straightway prepared a letter Exh.20 in his own hand writing of which original was given to his immediate official superior. Mr.K.C.Shah has argued that from the very beginning it is the case of the prosecution that Mr.Jadav received an information at 19.00 hrs. and original letter Exh.20 was received by Deputy Supdt. of Police at 19.15 hrs and, therefore, there was no delay, at all in sending the information to Mr.Modi and, therefore, in this case, Mr.Jadav instead of writing an information separately on another paper wrote down the information in the letter Exh.20 itself and original was given to Mr.Modi who is admittedly immediate superior official of Mr.Jadav and, therefore, in this case, Section 42 is fully complied with in its true letter and spirit and therefore, in no case it can be said that Section 42 of the NDPS Act was not observed by Mr.Jadav.

11. Mr.Supehia enlarged his arguments by submitting that there should be two separate papers; one showing the information having been reduced into writing by Mr.Jadav and another separate paper showing that copy of information which was reduced into writing on former paper was sent to immediate official superior. He has argued that looking to the text of letter Exh.20, it can merely be said that Mr.Jadav intimated his immediate superior officer about the proceeding intended to be taken by him and this letter Exh.20 cannot be said to be a document in compliance with sub-sec.(2) of Sec.42 of the NDPS Act. He has further argued that what is

required in Section 42 of the NDPS Act is to be complied strictly in accordance with the mandate given in that section. Mr.Jadav cannot avoid the requirement of reducing the information into writing by mere giving intimation Exh.20 to his immediate superior officer. In short, the submission is to the effect that there should be two separate sheet of papers; one for compliance of sub-sec.(1) of Sec.42 of the NDPS Act and another for compliance of sub-sec(2) of Sec.42 of the NDPS Act.

12. As observed by the Division Bench of this Court in the case of Kamlesh Parmanand Gangwar Vs. State of Gujarat reported in 1999(3) Vol.40 GLR 2119, the purpose behind the requirement of informing immediate superior as provided under Sec.42(1) of the Act is to protect the interest of a citizen and to eliminate the possibility of any manipulation or misuse of power. It is true that value of such information which was at the earliest point of time for ascertaining the involvement of the accused for the offence is of high degree. A criminal court cannot normally avoid to be ignorant of such valuable information. The purpose behind the requirement of informing immediate superior as provided under Sec.42(1) of the Act is to protect and safeguard the interest of the accused and possibility of manipulation for involvement of accused in the crime can be ruled out.

13. It may be noted that complainant who received an information was a Police Inspector and, therefore, he was a Gazetted Officer. Under the circumstances, he cannot be said to be an officer under Sec.42(1) of the NDPS Act. He was an empowered officer under Sec.41(2) of the NDPS Act. At this stage, it is required to know as to how this police officer of the rank of Police Inspector can be said to be empowered officer under Section 41(2) of the NDPS Act.

14. The Government of Gujarat has by Notification No.GH-L. 14-NDS-1087 (i)-M dated 15th June, 1985, empowered all the officers of the Police Department of and above the rank of Inspector of Police posted in any part of the State of Gujarat, under Section 41(2) of the Act. This relevant notification is there on page 1419 of the Book titled "An Exhaustive Commentary on the Narcotic Drugs & Psychotropic Substances Act & Rules by N.K.Rastogi". It reads as follows:

(1). "Noti.No.GH-L. 14-NDS-1087(i)-M. dated 15th June 1985 - In exercise of the powers conferred by Sub-sec.(2) of Sec.41 of the Narcotic Drugs and Psychotropic Substances Act,

1985 (61 of 1985) and in supersession of all previous orders or notifications issued under Sec.22 of the Dangerous Drugs Act, 1930 (II of 1930) and in force in any part of the State, the Government of Gujarat hereby empowers for the purpose of the said Sub-sec.(2) of the following officers of the State Government, namely:-

1. All officers of the Police Department of and above the rank of Inspector of Police posted in any part of the State of Gujarat.

2. All officers of the Prohibition and Excise Department in the State of Gujarat of and above the rank of Inspector, Prohibition and Excise Department.

3. All the Inspector appointed under the Drugs and Cosmetics Act, 1940, (XXIII of 1940), in the State of Gujarat."

Another Notification reads as follows;

(2). Noti. No.GH/L/NDS/1087/10577 (iii)-M. dated 15th June 1985 - In exercise of powers conferred by Sub-sec.(2) of Sec. 53 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (61 of 1985) and in supersession of all previous orders or notifications, issued under Sec. 22 of the Dangerous Drugs Act, 1930 (II of 1930 and in force in any part of the State, the Government of Gujarat hereby invests the following officers with the powers of an officer, in charge of a Police Station within the limit of their respective jurisdiction for the investigation of an offence, under the said Act, viz.(1) All officers of Prohibition and Excise Department, i the State of Gujarat, of and above the rank of a Sub-Inspector (2) All the Ispector appointed, under Sec.21 of the Drugs and Cosmetics Act, 1940 (XXIII Of 1940).

15. In view of the aforesaid two notifications dated 15th June, 1985, complainant Mr.Jadav was a Police Inspector, being a Gazetted Officer and therefore, he was an empowered officer under Section 41(2) of the NDPS Act. In no case it can be said that he was an authorized officer under Section 42(1) of the Act. For an empowered officer under Section 41(2) of the Act, a duty is cast on him that on receipt of any information with regard to any

person, who has committed an offence punishable under Chapter IV of the Act, with regard to a Narcotic Drug or a Psychotropic Substance, he has to take down that information so received by him, or in other words that information is required to be reduced into writing. Similar duty is cast on an authorized officer under Section 42(1) of the said Act. Thus, duty is common for both types of Officers, namely, an empowered officer under Section 41(2) of the NDPS Act and an authorized officer under Section 42(1) of the NDPS Act. If these provisions of Section 41 and Section 42 of the NDPS Act are examined, we find that no particular procedure, method or mode is prescribed, as to how and in what manner and where the information should be reduced into writing. Looking to Section 41 and 42 of the NDPS Act, the only duty which is cast on an officer who receives an information with regard to an offence committed by any person, in respect of a contraband article and which is punishable under the provisions of the NDPS Act, is that he has to reduce the information so received into writing. When the procedure, method or mode of reducing the information into writing, is not prescribed under Section 41 or 42 of the NDPS Act, then we have to interpret that Section, so far as it relates to the information which is required to be reduced into writing. Mr.Supehia has argued that Mr.Jadav ought to have reduced the information into writing, either in the Station Diary or in the Register which is being kept and maintained for taking down such information. He has also argued that law requires that information should be reduced into writing on one paper and copy of that information on another paper should be sent to his immediate superior officer forthwith. According to him, there should be clear cut evidence from the side of the prosecution to show that the officer who received the information, had reduced the information into writing, on a particular sheet of paper and after reducing it, that officer had sent a copy of that information to his immediate superior officer forthwith, on one another separate sheet of paper, as per subsection 2 of Section 42 of the said Act. For this, he has placed reliance on a case of Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat reported in AIR 2000 SC 821, wherein it has been observed by the Hon'ble the Supreme Court (Page : 826, Para 18 and 19).

Para 18-19 : Learned counsel for the State of Gujarat thereupon contended that as the appellant did not dispute the factum of recovery of the "Charas" from the vehicle it does not matter that the information was not recorded at the first instance by the police officer. We cannot approve the contention because non-recording of

information has in fact deprived the appellant as well as the Court of the material to ascertain what was the precise information which PW-2 got before proceeding to stop the vehicle. Value of such an information, which was the earliest in point of time, for ascertaining the extent of the involvement of the appellant in the offence, was of a high degree. A criminal Court cannot normally afford to be ignorant of such a valuable information. It is not enough that PW-2 was able to recollect from memory, when he was examined in Court after the lapse of a long time, as to what information he got before he proceeded to the scene. Even otherwise, the information which PW-2, in this case, recollected itself tends to exculpate the appellant rather than inculpatel him.

15.1 By citing this authority, Mr.Supehia has argued that where a Police Officer has reason to believe from information given by any person that a narcotic drug was kept or concealed in any building, conveyance or enclosed place, the requirements to be complied with as envisaged by Section 42 by him, before he proceeds to search any such building or conveyance or enclosed place, were twofold;

(1) is that, he should have taken down the information into writing;

(2) is that, he should have sent forthwith a copy thereof to his immediate officer superior.

16. In view of the aforesaid requirements, we have examined the evidence on record as to whether, in fact Mr.Gohil had complied with the requirements, by reducing the information into writing or not. The complainant, PW-4, Mr.Jadav has deposed in his evidence that on 15/02/1996, he in company of Mr.Modi, Dy.S.P., Narcotics Cell, P.I.- Mr.N M Pathan, Head Constable Mr.Maganbhai, Ishwarbhai and other police personnel had come to Navsari for carrying out the raid, on the basis of the information received. While he was in Navasari, at about 1900 hrs., he received an information through the informant that one person named Abdul Salam Yusufbhai Shaikh, a resident of Jumma Masjid, Navsari was selling Charas, being a narcotic substance on the Otta of Jumma Masjid and that he had put on a sky colored full sleeves open shirt and white pant. In the information, he was also informed of by the informant, that that person was of a small stature, having a black complexion. At this stage, he has not deposed that he reduced that information into writing, but, immediately after deposing

as above, he has deposed that on receipt of such information, he informed about that in writing to the Dy.S.P., Narcotics Cell, Mr.Modi. Now, that writing is produced and proved at Ex.20 (Page 155).

17. As discussed earlier we have pointed out that either in Section 41(2) or Section 42(1) of the Act, no procedure, method or mode is prescribed as to how and in what manner and where the information should be reduced into writing. On reading Ex.20, we are completely satisfied that on receipt of the information, he reduced the information into writing Ex.20, in a form of a letter addressed to his superior officer. Merely because it is reduced into writing in a letter addressed to his superior officer, it cannot be said that Mr.Jadav failed to comply with the requirements of Section 41(2) of the said Act. At this stage, it is required to know as to what is the purpose and object behind reducing the information into writing in Section 41(2) or 42(1) of the NDPS Act.

18. In a well known case of State of Punjab Vs. Balbir Singh, reported in 1994 (3) SCC, 299, the Apex Court has observed in Para 15 as follows;

> "The object of NDPS Act is to make stringent provisions for control and regulation of operations relating to those drugs and substances. At the same time, to avoid harm to the innocent persons and to avoid abuse of the provisions by the officers certain safeguards are provided which in the context have to be observed strictly. Therefore, these provisions make it obligatory that such officers mentioned therein, on receiving an information, should reduce the same to writing and also record reasons for the belief while carrying out arrest or search as provided under the proviso to Section 42(1) and to that extent they are mandatory. Consequently the failure to comply with these requirements affects the prosecution case and therefore, it vitiates the trial."

18.1 Keeping in mind the aforesaid object of the Act, it is required to be noted that in this case, Mr.Jadav, no doubt reduced the information into writing on some another sheet of plain paper. He immediately wrote down a letter, Ex.20, and gave it to his immediate superior officer at 19.15 hrs.. Had he not written any letter,Ex.20, to his superior officer then of course, argument of Mr.Supehia needs consideration. But, in this

case, Mr.Jadav immediately wrote down a letter, Ex.20, wherein he incorporated the entire text of information, at the earliest point of time because he received that information at 19.00 hrs.. So, we are of the view that the requirement of reducing the information into writing was very much complied with by Mr.Jadav in its true letter and spirit.

19. At this stage, we are tempted to refer a case of Sajan Abraham Vs. State of Kerala, reported in 2001 (6) SCC, 692, wherein it has been held as follows;

> "In construing any facts to find, whether the prosecution has complied with the mandate of any provision which is mandatory, one has to examine it with a pragmatic approach. The law under the aforesaid Act, being stringent to the persons involved in the field of illicit drug traffic and drug abuse, the legislature time and again has made some of its provisions obligatory for the prosecution to comply with, which the Courts have interpreted it to be mandatory. This is in order to balance the stringency for an accused, by casting an obligation on the prosecution for its strict compliance. The stringency is because of the type of crime involved under it, so that no such person escapes from the clutches of the law. The Court, however, while construing such provisions strictly should not interpret them so literally so as to render their compliance, impossible. However, before drawing such an inference, it should be examined with caution and circumspection. In other words, if in a case, the following of a mandate strictly, results in delay and in trapping an accused, which may lead the accused to escape, then the prosecution case should not be thrown out."

19.1 Here, in this case, if we read the panchnama, Ex.7, we find that immediately after sending letter, Ex.20 to his immediate superior who received it at about 1915 hrs. Mr.Jadav drew a preliminary panchnama in Navasari Town Police Station. That panchnama was drawn during the period from 1935 hrs. to 1955 hrs. and immediately thereafter, they rushed to the place indicated in the information and as per the evidence of Mr.Jadav, when they reached Jumma Masjid, they found that a person resembling the person whose description was given in the information, was found sitting on the Otta of Jumma Masjid and thereafter on carrying out search,

contraband article was found, to which there is no dispute from Mr.Supehia. After recovery of the contraband article, sample of that article was seized under the panchnama in presence of panch witnesses and for the procedure which Mr.Jadav followed at the place of raid, a panchnama was drawn just below the earlier preliminary panchnama, which was drawn before leaving Navsari Town Police Station. That second part of the panchnama was completed at 2045 hrs.. So, looking to this time gap in between the information received and the raid carried out at the place indicated in the information, Mr.Jadav tried to see that the person from whom the information was received, may not escape from the place indicated in the information. In view of this, instead of reducing the information into writing, in some another Register or another plain paper, if he had reduced into writing the information, vide Ex.20, then fault cannot be found with Mr.Jadav that he failed to comply with the mandatory requirements of Section 41(2) of the NDPS Act as Mr.Jadav was a Gazetted Officer.

19.2 In above referred case of Sajan Abraham (Supra), the facts are discussed in Para 2 of the decision. In the above referred case, Head Constables, PW 3 and 2 along with other Constables of the Special Squad, got an information at about 1900 hrs. on 10/10/93 that a person was selling injectable narcotics drugs near Blue Tronics Junction, Palluruthy. They informed that to PW-5, Sub Inspector of Police, Palluruthy Cusba Police Station who was coming in a jeep along with his police party. Thereafter, PW-5 along with his police party including PW-3, i.e. the Head Constable who received the information and other members of the Special Squad went to the scene of occurrence and stopped their vehicle, a little away from the spot. On reaching there, they found the accused was standing on the road with a bag in his hand. He was identified by PW-3, Head Constable and apprehended by PW-5, Sup Inspector of Police. On searching the bag possessed by the appellant, it was revealed that it contained 5 strips of 5 ampoules each of Tidigesic and 3 injection syringes and a purse containing currency note of Rs.10/-. At the spot, one ampoule was taken for chemical analysis and the said contraband articles were seized. The appellant was also arrested. Thereafter, ultimately, the chargesheet was submitted and the appellant of that case was put on trial, for an offence punishable under Section 21 of the Act and he was found guilty.

19.3 Considering these facts, the Hon'ble the Supreme Court has observed in Para 7 as follows;

"Para 7 : In the present case, PW 3 Head Constable got information with reference to the appellant only at about 7 p.m. that the person is selling injectable narcotic drugs near Blue Tronics Junction, Palluruthy. When he proceeded for Palluruthy Police Station to give this information to his party, who were on patrol duty coming, hence the said information was communicated there by PW 3 to PW 5. Thereafter, PW 5 along with his police party and PW 3 immediately proceeded towards the place where the appellant was standing. Had they not done so immediately, the opportunity of seizure and arrest of the appellant would have been lost. How PW 5 could have recorded the information given by PW 3 and communicated to his superior while he was on motion, on patrol duty, in the jeep befor proceeding to apprehend him is not understandable. Had they not acted immediately, the appellant would have escaped. On these facts, we do not find any inference could be drawn that there has been any violation of Section 42 of the Act."

20. The facts of that case and facts of this case are practically similar. Applying the principles of law laid down in the aforesaid case to the facts of this case we are expected to take a pragmatic view and when we find that Mr.Jadav reduced the information by preparing a letter, Ex.20, which was given to his immediate officer, the compliance is fully made by him.

21. Now, the question is for our consideration whether Mr.Jadav who got an information was required to send copy of it to his immediate superior officer, as per Section 42(2) of the NDPS Act. Sub-section 2 of Section 42 of the said Act requires that when an officer takes down an information in writing under Section 42(1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior. At this stage, it is required to know as to whether Mr.Jadav was an authorized officer under Section 42(1) of the NDPS Act. To this question our answer is NO because at the relevant point of time, he was a Police Inspector and he being a Gazetted officer and in view of the notification reproduced hereinabove, he was an empowered officer under Section 41(2) of the NDPS Act. So, the provisions of Section 42 will not be applicable to Mr.Jadav, as he was an officer of a gazetted rank and was empowered under Section 41(2) of

the said Act as per the notification referred to hereinabove. The question does not arise for him to apply that subsection 2 of Section 42 of the said Act. On making examination of Section 42(2) of the said act, we find that it is applicable to those officers who are referred to in Section 42(1) of the said Act. We also do no find the analogous provision of Subsection 2 of Section 42 of the said Act in Section 41 of the NDPS Act which is applicable to Mr.Jadav and therefore, Section 42(2) of the said Act is not applicable to Mr.Jadav as he was a gazetted officer empowered with the powers under Section 41(2) of the said Act. However, Mr.Supehia has argued that as per the principles laid down in the case of Abdul Rashid Ibrahim Mansuri, the requirement of sending a copy of the information to the immediate superior officer is mandatory for both types of officers, whether he is an empowered officer under Section 41(2) of the Act or whether he was an authorized officer under Section 42(1) of the said Act. We are unable to agree with Mr.Supehia because the requirement which is not there in Section 41 of the Act cannot be imported for the purpose of an interpretation by taking shelter of some authority. After all, authorities are required to be considered for the purpose of ratio laid down in that case and not for any other purpose.

22. In the case of State of Punjab Vs. Baldev Singh, reported in 1999 (3) SC Crimes, 147, it is held by a Constitution Bench of the Hon'ble the Supreme Court as follows;

> "It is a well settled proposition of law that a decision is an authority for what it decides and not that the Courts are obliged to employ an intelligent technique in the use of precedents, bearing it in mind that a decision of the Court takes its color from the question involved in the case in which it was rendered."

23. In the aforesaid case, one case of C.I.T. Vs. Sun Engineering Works (P) Ltd., reported in 1992 (4) SCC 363, is referred to and in that case it has been observed in Para 39;

> "It is neither desirable nor permissible to pick out a word or sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observation from the judgments have to be

considered in the light of the question which were before this Court. A decision of this Court takes it color from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support the reasonings."

24. In another case of Padmasundara Rao (Dead) and others Vs. State of T.N. and others, reported in 2002 AIR SC Weekly, 1156, the Constitution Bench of the Hon'ble the Supreme Court has observed in Para 8(a) as follows;

"Courts should not place reliance on decisions, without discussing as to how the factual situation fits in with the fact situation of the decision, on which reliance is placed. There is always peril in treating the words of a speech or a judgment as though they are words in the legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

24.1 Keeping in view the aforesaid legal position with regard to the precedents, we have examined the facts of the case of Abdul Rashid Ibrahim Mansuri (supra). In view of the case, one Auto Rickshaw was intercepted by a Posse of Police Personnel while it was proceeding to Shahpur (Gujarat) and four gunny bags were found stacked in the vehicle. This High Court held that Section 42 will not be applicable but Section 43 will be applicable and if Section 43 of the said Act is applicable then the officer was not obliged to take down information. The Hon'ble the Supreme Court held that the police officer admitted that he proceeded to the spot only on getting prior information from a Constable and the information was precisely one falling within the purview of Section 42(1) of the Act and not under Section 43 as per which he was not obliged to take down the information and hence he cannot wriggle out of the conditions stipulated in the said second sub-section and there was noncompliance with Section 42 of the Act. Thus Hon'ble the Supreme Court decided the question as to

whether Section 43 of the said Act will be applicable or Section 42 of the Act will be applicable to the facts of that case. Considering the facts and circumstances of that case, Hon'ble the Supreme Court held that Section 42 will be applicable and not Section 43 of the Act. In this cited case, nowhere it is decided that subsection 2 of Section 42 of the Act will be applicable even to empowered officers under Section 41(2) of the Act. Therefore, this authority is of no assistance to Mr.Supehia.

25. He has cited another authority of State of Orissa Vs.Laxman Jena reported in JT 2002 (5) SC, 1 wherein, it has been laid that compliance with the requirements of the proviso to Section 42(1) is a legal obligation on the part of the authority exercising the power under Section 42. Such authority ought to record the grounds of his belief to make the search in terms of the powers conferred on him. In that case, it was held that since there was no material or evidence on record to show that the requirements of the proviso to Section 42(1) had been complied with, the High Court was justified in acquitting the accused.

25.1 In para 5 of the aforesaid cited case, the Hon'ble the Supreme Court has dealt with Section 42. It has been observed as follows;

> "There is no dispute that Section 42 has two parts. The first part deals with the recording of the information and the second with the conduct of the search. Again first part of the section has two limbs, first dealing with the recording of the information received and the other relating to the belief of the officer based upon his personal knowledge. Any information recorded in terms of sub-section (1) of section 42 is required to be sent to the superior officer of the person recording the information as mandated by subsection 2 of section 42. Second part of the section 42(1) deals with the power of the officer regarding entry, search, seizure and arrest without warrant of authorization. The authorized officer has the power to enter into and search any building, conveyance or place and in case of resistance, break open any door and remove any obstacle to such entry. He has power to seize the drug or substance and all materials used in the manufacture thereof and any other article any any animal or conveyance which he has reason to believe to be liable to confiscation

under the Act and to detain and search, if he thinks proper, and arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance."

25.2 Even in this authority Hon'ble the Supreme Court has not held that Subsection 2 of Section 42 of the NDPS Act will be applicable to an empowered officer under Section 41(2) of the NDPS Act.

26. We have come across a case of Kamlesh Parmanand Gangwar Vs. State of Gujarat, reported in 1999(3) 40(3) GLR, 2119 wherein the Division Bench of this Court has specifically held as follows; (para 8)

"The entire procedure is conducted in the presence of S.P.. It is true that PSI has admitted in his deposition during cross-examination that he had not informed his superior officer in writing. However, if the provisions of section 42(1) of the NDPS Act are considered, then it would be quite clear that requirement of section 42(2) would be necessary to be met with only where, the officer making the entry, search, seizure or arrest is an officer falling under section 42(1) of NDPS Act. But where an officer falling under the category of Section 41(2) of the NDPS Act carries out such entry, search, seizure or arrest, requirement of section 42(2) would not be necessary to be met with. In the instant case, the entire procedure of entry, search, seizure and arrest is carried in the presence of S.P. who is himself a gazetted officer and would, therefore, fall under the category of section 41(2) of the NDPS Act. The purpose behind the requirement of informing immediate superior as provided under Section 42(1) of the Act is to protect the interest of a citizen and to eliminate the possibility of any manipulation or misuse of power. Thus, the spirit of letter of law is virtually fulfilled in the instant case when the PSI immediately informed his superior though orally and this superior officer immediately responded to the information, rushed to the police station and carried out the entire process of entry, search, seizure and arrest. The result is that legally requirement of section 42(2) is not required to be fulfilled and factually and virtually and in spirit and letter of law, the requirement was

fulfilled."

27. However, if the provisions of Section 42(1) of NDPS Act are considered then it would be quite clear that requirement of Section 42(2) would be necessary to be met with only when the officer making the entry, search, seizure or arrest is an officer falling under Section 42(1) of the NDPS Act. But, where an officer falling under the category of Section 41(2) carries out the entry, seizure etc. the requirement of Section 42(2) would not be necessary to be met with.

28. In the instant case, the entire procedure of search, seizure and arrest was carried out in presence of a Dy.S.P. who himself was a gazetted officer and he falls under the category of Section 41(2) of the NDPS Act. The purpose behind the requirement of informing the immediate superior officer as provided under Section 42(1) is to protect the interest of a citizen and to eliminate the possibility of any manipulation or misuse of power. Thus, the spirit of letter of law is factually fulfilled in the instant case when the P.I. immediately informed, though orally and then the superior officer immediately responded to the information, rushed to the Police Station and carried out the entire process of entry, search, seizure and arrest. The contention that the entire trial would stand vitiated for want of compliance of Section 42(2) of the Act, therefore, cannot be accepted. In spite of the aforesaid legal position with regard to the absence of analogous provision similar to Section 42(2) of the NDPS Act in Section 41, if it is held that even for a gazetted officer though he is empowered officer under Section 41(2) of the Act was required to fulfill the requirement stated in Section 42(2) of the Act, even then the requirement is also fulfilled. Here, in this case, Mr.Jadav had come from Ahmedabad to Navsari in company of Dy.S.P., Mr.Modi was present through out the raid. Here, in this case, as per the evidence of Mr.Jadav, when he in company of Dy.S.P., Mr.Modi was present in the Navsari Town Police Station at about 1900 hrs. received the information from the informant, he immediately wrote letter, Ex.20 and gave it to Mr.Modi. Mr.Modi put his endorsement for having received that letter, Ex.20 below letter, Ex.20 to the effect that he received at 1915 hrs,, i.e. at the earliest point of time, immediately after receiving the information. Mr.Supehia has tried to impress upon this Court that letter, Ex.20 is not a copy of information which Mr.Jadav had reduced into writing, but, it is merely an intimation which Mr.Jadav had reduced into writing. He argued that it is merely an intimation given

to his immediate superior officer. We are not impressed on this point because we have examined Ex.20 from the records and proceedings of the case. Ex.20, which is at Page 135 in the original records and proceedings of the case is a handwritten letter. Ex.20 is an office copy because, Ex.20 is a carbon copy of the original Ex.20 is duly proved by Mr.Jadav. So, in this case, original of Ex.20 was given to Mr.Modi and on receipt of original Mr.Modi put an endorsement in the margin of the office copy i.e. the carbon copy, Ex.20. So, this is a case in which the original copy was given to the superior officer and carbon copy was retained by Mr.Jadav. If Section 42(2) of the Act is applicable then the officer is required to send copy of the information to his immediate superior officer. But, here in this case, instead of the copy, original of Ex.20 was given to Mr.Modi. So, this is a case on a better footing.

29. Looking to Section 42 of which subsection is one of the parts of it, we are of the considered view that Section 42(1) of the NDPS Act is applicable to an information given by any person that any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place and as per Section 42(1) of the NDPS Act, such an information received by an authorized officer referred to in Section 42(1) of the NDPS Act is required to be reduced into writing. In view of this, if an information is received with regard to any narcotic drug or psychotropic substance, in respect of an offence punishable under Chapter IV has been committed, is kept by any person in a public place, then, requirement of reducing the information to that effect into writing, is not necessary.

30. Our view is fortified by a decision of a Division Bench of this Court in a case of Ravishankar Bhagwatiprasad Misra Vs. State of Gujarat, reported in 2000(1) 41(1), GLR, 137. It has been held in Para 8 of the decision as follows;

> "We reiterate that provisions of Section 41(2) and 42(2) would not be applicable to the present case in as much as this is not a case where a building or conveyance or a private place was required to be searched. This is a case of a person being searched. This is a case of a person being search when he was sitting on a

platform portion (Otta Portion) of a building styled as Hoti Bungalow in Nanwala Complex, Near Anisha Auto Parts. The Apex Court has noted what portion of the provision contained in the aforesaid Section is mandatory and what portion of the provision contained therein is directory. When need not detain ourselves in discussing that part of the submission. Suffice it to say, that in the facts as noted hereinabove, it was not necessary to record in writing the grounds of the information before any and forward such information before hand and to forward such information forthwith to the immediate superior officer, else it might have frustrated detection of such a serious criminal activity. The result is that this argument would fail."

31. In a recent decision of Narayanaswamy Ravishanker Vs. Assistant Director, Directorate of Revenue Intelligence reported in 2002(8), SCC, 7, the Hon'ble the Supreme Court has observed in Para 5 as follows;

"In the instant case according to the documents on record and the evidence of the witnesses, the search and seizure took place at the airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of noncompliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant."

32. Reverting to the facts of this case, we find that from the very beginning, it is the case of the prosecution that PW-4, Mr.Jadav received an information from one informant to the effect that one person named Abdul Salam Yusufbhai Shaikh, resident of Jumma Masjid, Navsari was selling Charas, being a narcotic substance on the Otta of Jumma Masjid at Navsari. It is also the case of the prosecution that on the basis of the said information, Mr.Jadav in company of two panch witnesses and other police personnel went to the place, which was indicated in the information. When they reached Jumma Masjid, they saw that one person of a small stature and whose complexion was black, was found sitting on the Otta (steps) of Jumma Masjid. Now, Jumma Masjid cannot be said to be a private place. It is a public place. The accused was found sitting on the Otta of that Jumma Masjid and therefore, the information which was received

was not with regard to any narcotic drug or psychotropic substance, kept or concealed in any building, conveyance or enclosed place. In view of the aforesaid two authorities, namely, (i) Ravishankar Bhagwatiprasad Misra (Supra), and (ii) Narayanaswamy Ravishankar (Supra), the accused was found on the Otta of Jumma Masjid which was a public place. The legislature has taken care of the meaning of "Public Place". In Section 43, there is one explanation which reads as follows;

32.1 Explanation : For the purpose of this Section, the expression "public place" includes any public conveyance, hotel, shop or other place indicated for use by or accessible to the public".

32.2 Masjid is such a place that it is accessible to the public at large. No one can say that Masjid is a private property of somebody else. In view of this, Jumma Masjid is a public place and in view of the case of Narayanswamy Ravishankar (Supra), Section 43 will be applicable to the facts of this case and there is no provision equivalent to the provision of Section 41(2) of the NDPS Act, with regard to the sending of a copy of the information to the officer superior, in Section 43 of the NDPS Act.

33. In view of the discussion made hereinabove, we are of the considered view that, here, in this case, Subsection 2 of Section 42 of the NDPS Act is not applicable because the information was with regard to a narcotic drug with some person who was in a public place and on making raid and search, that person was found on the Otta of Jumma Masjid being a public place. Therefore, Section 42(2) of the NDPS Act is not at all applicable to the facts and circumstances of this case. As discussed earlier, in spite of this legal position, Mr.Jadav sent the original of Ex.20 to his immediate superior officer and therefore, he complied with the requirements of Section 42(2) of the NDPS Act, in its proper perspective and that compliance was a substantial compliance of subsection 2 of Section 42 of the NDPS Act in its true letter and spirit.

34. In view of what is stated hereinabove, the contention of Mr.Supehia that Mr.Jadav failed to comply with subsection 2 of Section 42 of NDPS Act is devoid of merits and therefore, it requires to be rejected and accordingly, that contention is rejected.

35. As stated earlier in this appeal, Mr.Supehia has not taken any another contention except that of Section

42(1) and 42(2) of the NDPS Act. We have dealt with that contention by keeping in mind the legal position with regard to it and by making re-appreciation of the evidence on record.

36. Even, otherwise we have examined the impugned judgment and we find that the learned Judge of the trial court has correctly appreciated the evidence, in consonance with principles of law, with regard to the appreciation of evidence. The learned Judge of the trial court who had an opportunity to observe the demeanour of witnesses, has given cogent and convincing reasons to come to his own conclusion. We are in full agreement with that reasons assigned by him. We do not find any material or ground on record to dislodge the findings arrived at by the learned Judge of the trial court. Mr.Supehia is unable to satisfy this Court that there is a serious infirmity in appreciation of evidence made by the learned Judge of the trial court. When, we are in full agreement with a view taken by the trial court, it is needless to reproduce the same reasons assigned by him and restate the entire evidence on record again. Under the circumstances, we do not find any ground to interfere with the ultimate findings arrived at by the learned Judge of the trial court and therefore, the appeal lacks merits and same is required to be dismissed.

37. For the foregoing reasons, this appeal is dismissed. The judgment, Ex.42, rendered by the learned Additional Sessions Judge, Valsad at Navsari in NDPS Case No. 8 of 1996 on 30/12/98 convicting and sentencing the appellant is confirmed. The muddammal articles be disposed of, according to the directions given by the learned Judge of the trial court, in final operative part of the judgment.

(D. P. Buch, J.)

(H. H. Mehta, J.)

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